

REMARKS

Applicants submit that by the present Amendment and Remarks, this Application is placed in clear condition for immediate allowance. Indeed, the present Amendment does not generate any new matter issue, but merely incorporates the limitations of claim 1 into claim 5 and the limitations of claim 7 into claim 8, as claims 5 and 8 depended from claims 1 and 7, respectfully. Applicants, therefore, submit that the present Amendment does not generate any new matter issue or any new issue for that matter. Accordingly, entry of the present Amendment and Remarks, and favorable consideration, are respectfully solicited pursuant to the provisions of 37 C.F.R. §1.116.

Claim Objections.

The Examiner objected to claims 5, 6, and 8 through 10 because independent claims 5 and 8 depend from withdrawn claims. By the present Amendment, claims 5 and 8 have been placed in independent form, thereby overcoming the objection as requested by the Examiner. Applicants, therefore, submit that the objection to claims 5, 6, 8, and 10 has been overcome and, hence, solicit withdrawal thereof.

Claims 5, 6, and 8 through 10 were rejected under 35 U.S.C. §102 for lack of novelty as evidenced by Jones.

In the statement of the rejection the Examiner asserted that Jones discloses an electronic device identically corresponding to those claimed, referring to Figs. 2 and 3, and to column 4, lines 21 through 30. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.* 329 F.3d 1358 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In imposing a rejection under 35 U.S.C. §102 the Examiner is required to specifically identify wherein an applied reference is asserted to disclose each feature of the claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). There is a significant difference between the claimed inventions and the electronic device disclosed by Jones that scotches the factual determination that Jones discloses an electronic device identically corresponding to that claimed.

Specifically, the inventions defined in independent claims 5 and 8 are directed through an electronic device comprising, *inter alia*, an electron-emitting element having an electron emitting portion with a polygonal cross section. This feature is neither disclosed nor suggested by Jones. Indeed, advertent to column 4 of Jones, line 29, it is disclosed that the electron emitting portion 29 (Fig. 2) has a conical shape. Thus, Jones neither discloses nor suggests an electronic device identically corresponding to those claimed.

Applicants separately argue the patentability of claims 9 and 10, which further specify that the intermediate portion is in the shape of a prism. This feature is neither disclosed nor suggested by the applied prior art. Indeed, advertent to column 4 of Jones, lines 27 through 29, it should be apparent that the intermediate portion 27 (Fig. 2) of the disclosed device as a frusto-

conical shape. Thus, Jones fails to disclose an electronic device corresponding to those defined in claims 9 and 10.

The above argued structural differences between the claimed inventions and the electronic device disclosed by Jones undermine the factual determination that Jones discloses an electronic device identically corresponding to those claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 5, 6, and 8 through 10 under 35 U.S.C. §102 for lack of novelty as evidenced by Jones is not factually viable and, hence, solicit withdrawal thereof.

Based upon the foregoing it should be apparent that the objection and rejection has been overcome and that all active claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

09/942,101

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

A handwritten signature in black ink, appearing to read 'AJS' followed by a stylized flourish.

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Date: April 8, 2004